Public Prosecutor

AND

Haji Mohammad Asmawi bin Haji Zulkifli

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 33 of 2021)

Hazarena bte POKSJ DP Hj Hurairah, Judge
29th April 2024

Criminal – trial – Section 405 of the Penal Code – Section 409 of the Penal Code – Chapter 22 - public servant – Narcotics Control Bureau – Government Officer – criminal breach of trust – seized exhibits – cash – mobile phone – strong room – ongoing investigation – 6 years – reporting – Investigating Officer – dishonestly misappropriating – wrongful gain – wrongful loss – standard operating procedures – false.

DPP Ahmad Firdaus Mohammad for the Public Prosecutor.
Defendant In Person.

Case cited:

Public Prosecutor v Lam Leng Hung and other appeals [2017] 4 SLR 474; [2017] SGHC 71

Statutes cited:
Section 405 of the Penal Code, Chapter 22
Section 409 of the Penal Code, Chapter 22
Section 23 of the Penal Code, Chapter 22
Section 24 of the Penal Code, Chapter 22

JUDGMENT

Hazarena, Judge:

Introduction

1. The defendant is charged with criminal breach of trust under Section 405 and punishable Section under 409 of the Penal Code, Chapter 22. The charge reads as follows:

   Charge:

   That you, sometime on 6 August 2016, in Brunei Darussalam, being employed as a public servant namely an Assistant Narcotics Officer at the Narcotics Control Bureau, and in such capacity entrusted with properties, to wit,

   a) E5 - cash of B$561;

   b) E7 – cash of B$514;

c) E9 – one (1) Samsung Duos mobile phone

which are seized exhibits in relation to an ongoing investigation of which you were appointed as the Investigating Officer and are to be kept in custody in the strong room of the Tutong Narcotics Control Bureau, did commit criminal breach of trust in respect of such properties contrary to section 405 of the Penal Code, Chapter 22, and punishable under section 409 of the same.

2. The prosecution called a total of 14 witnesses and at the end of the prosecution's case the Court asked the prosecution to submit on whether or not a prima facie case had been established. This was for the benefit of the defendant who is a lay person and is not legally represented. Upon hearing submissions the Court found a prima facie case against the defendant and invited the defendant to put forward his defence.

3. At the time of the offence, the defendant was an Assistant Narcotics Officer (ANO) who was tasked to investigate a drugs case following on from a raid by the Narcotics Control Bureau (NCB) case TT/BKN/18B/2016. It was during this raid that several items were seized, including sums of money ("the money") and a Samsung phone ("the phone") that are mentioned in the charge (known as E5, E7 and E9). These seized items were documented by the NCB and placed in a strong room pending the completion of the investigation.

4. It is alleged that the defendant, as the Investigating Officer (IO) had removed the mentioned sum of money (E5 and E7) in identified notes and serial numbers and a phone (E9) during the course of the investigation. It later transpired that the money that was returned was not the same as the money that was initially taken out i.e. the money had different serial numbers (P14 and P15). The phone was never returned and instead a different phone was returned (P13).

5. It is on this basis that the defendant was charged in court.

The Law

6. Section 405 of the Penal Code, Cap 22 provides "*Criminal breach of trust by a public servant*, *banker*, *merchant*, *or agent.*" To which I will refer to as "CBT".

7. The law applies to individuals who are entrusted with property or have control over property. This trust can arise in two situations. Firstly, in their role as a public servant (someone working for the government in an official capacity). Secondly, in the course of their business as a banker, merchant, broker, attorney, or agent (someone representing others in various capacities).

8. Next, it must be proven that the person was given the responsibility or has been entrusted with certain property, and has misused or misappropriated it, converted it to his own use, used it or disposed of it.

Evidence and Witnesses

9. The following witness and evidence were presented to Court:

Witnesses

1.	ANO II Mohd Sufri bin Jamil	PW1
2.	ANO Abd Malik bin Ar-Rasyid bin Hj Md Idris	PW2
3.	ANO Yuradani bin Md Yunos	PW3
4.	Greecay binti Anai	PW4
5.	NO Snnry Ecs	PW5
6.	Nurul Jannah (PW6) bt Jainah	PW6
7.	LCpl 4957 Hazirol bin Hj Raya	PW7
8.	Sgt 3730 Yusri Majid	PW8
9.	Sgt 3376 Ak Hj Md Rizal bin Pg Hj Omar	PW9
10.	S/Sgt 2863 Azami bin Hj Kamis	PW10
11.	Mohd Azezum (PW13) bin Suan	PW11
12.	Arul (PW12) bin Suan	PW12
13.	NO Awg Mohd Alizan bin Awg Zaini	PW13
14.	Insp Rani bin Padan	PW14

List of Exhibits

1.	Charge sheet dated 15th November 2021	P1
2.	Prosecution witness list	P2
3.	117B statement of ANO II Mohd Sufri bin Jamil	P3
4.	Lampiran A – phto album	P3A
5.	117B Statement of ANO Abd Malik bin Ar-Rasyid bin Hj Md Idris	P4
6.	BKN78 exhibit E5	P4A
7.	BKN78 exhibit E7	P4B

8.	BKN 9/1 05248	ID1/P4C
9.	BKN 9/1 05249	ID2/P4D
10.	BKN 114 handover form dated 27.6.2016	ID3/P4E
11.	Wallet	ID7/P5
12.	117B statement of ANO Yuradani bin Md Yunos	P6
13.	BKN114 TT/BK/Harta/0025 dated 27.6.2016	P6A
14.	BKN 20 E5 to E9	P6B
15.	Diary of ANO Yuradani bin Md Yunos BKN32	P7
16.	117B statement of Greecay binti Anai	P8
17.	Arahan Tetap 006 BKN	P8A
18.	117B statement of NO Snnry Ecs	P9
19.	117B statement of Nurul Jannah (PW6) bt Jainah	P10
20.	117B statement of LCpl 4957 Hazirol bin Hj Raya	P11
21.	Polis 22 Statement of Hj Mohd Asmawi dated 5.4.21	P11A
22.	117B statement of Sgt 3730 Yusri Majid	P12
23.	Polis 188 EX1, Ex2, EX3 TT/CR/121/2021	P12A
24.	Polis 22 statement of Hj Asmawi dated 17 April 2021	P12B
25.	Rejected exhibit E9/EX1	ID8/P13
26.	Plastic seal and cash E5/EX2 $561.00	ID5/P14
27.	Plastic seal and cash E7/EX3 $514.00	ID6/P15
28.	117b statement of Sgt 3376 Ak Hj Md Rizal bin Pg Hj Omar	P16
29.	Photo album prepared by Sgt 3376 Ak Hj Md Rizal bin Pg Hj Omar	P16A
30.	117B statement of S/Sgt 2863 Azami bin Hj Kamis	P17
31.	117B statement of Mohd Azezum (PW13) bin Suan	P18

32.	117B statement of Arul (PW12) bin Suan	P19
33.	117B statement of NO Awg Mohd Alizan bin Awg Zaini	P20
34.	Police 33 TT/CR/121/2021 dated 29.3.2021	P20A
35.	BKN 114 dated 12.4.21	ID9/P20B
36.	117B statement of PW14 Insp Rani binti Padan	P21
37.	117B statement of Hj Mohd Asmawi	D1

PW1- ANO II Mohd Sufri bin Jamil

10. PW1, identified as Mohd Sufri bin Jamil, an Assistant Narcotics Officer (ANO), was questioned about his role in the case and his preparation of his 117B statement. There were no issues with respect to the tendering of the 117B Statement (P3). PW1's role in the case (Tutong BKN IP 18B 2016) that was being investigated by the defendant while working as an IO, was as a witness for the strong room and to collect pictures for the case.

11. As part of his evidence, PW1 delved into the specific exhibits mentioned in his statement, including photos and documents (P3 and P3A) that detailed photographs of the seized monies amounting to BND$561.00 (E5), BND$514.00 (E7), the seized mobile phone (E9), the handover forms (BKN78) (P4A and P4Bwhen the items were seized from the owners of the seized property and handed over to NCB for investigation purposes, and also the handover forms for the exhibits within NCB. The actual forms were also shown and confirmed to the witness (P4A, P4B, P4C and P4D).

12. PW1 was questioned about witnessing various handovers of exhibits between officers and explained the discrepancies in exhibit descriptions and serial numbers. He explained that every time an exhibit was taken out and put back into the strong room, there would be proper handover forms that would have to be witnessed. PW1 Was a witness for another ANO (ANO Yura Danny – PW3) when the defendant returned the seized items in 2021 (P13, P14 and P15) back to the strong room. Upon receipt of the cash and mobile, PW1 noticed that the serial number of the bank notes did not match the strong room records in the seizure form, although the denominations and the amount were correct. Similarly, the seized mobile phone, E9, was also rejected by NCB as the serial number did not correspond to the strong room records in the seizure form. These rejected items were recorded as rejected in the strong room record book (P13, P14 and P15).

13. During cross examination, the witness raised concerns on the security measures, such as locked doors and the handling of personal items. PW1 confirmed that the office door could not be locked, and that most NCB officers would multitask and be involved in carrying out different duties at any one time. Further, PW1 was questioned about the extended absence of exhibits from the strong room and

procedures for their return and said that it was not normal for seized items to be taken out for so long and items would generally be returned the same day depending on the IO.

14. In re-examination, the witness clarifies procedures for returning seized items and the communication of instructions from superiors. These instructions would have to be in written form.

15. I found PW1 to be a credible witness he was familiar with the case, and explained his involvement in handling exhibits without issue. I accept his evidence as to the discrepancies in exhibit descriptions and serial numbers in that the items that were returned to the strong room were not the same items that had been initially seized.

<u>PW2- ANO Abd Malik bin Ar-Rasyid bin Hj Md Idris</u>

16. PW2, Abd Malik Ar-Rasyid bin Hj Md Idris, an ANO 1 with NCB currently works as an exhibit officer. He prepared a 117B statement and identified himself as the one whose name appears at the top of the statement and whose signature is on the last page tendered as P4. He identified the seized money (E5 and E7) and Sophie Martin wallet (identified as ID7) and a Samsung phone (E9) based on the amount seized and corresponding photo evidence.

17. Signatures on P4A documents indicate agreement with the items seized by the suspects in the ongoing case investigations. BKN 114 was explained as a declaration form used when handing over suspects and exhibits to the investigating officer. PW2 confirmed that the documents in (P4D and P4E) were signed by the suspects and the NCB officers. PW2 went on to explain that during an operation, suspects were separated, and seized items were separated accordingly. An incident is noted where the officer accidentally brought a suspect's phone to facilitate contact with a surety.

18. PW2 revealed standard procedures for documenting and handling seized items during an operation. This includes the preparation of statements, confirming with witnesses, and proper documentation of exhibits. The presence of signatures on documents like BKN 78 and BKN 114 suggests a formalized chain of custody process, ensuring accountability and integrity of evidence from seizure to handover to the investigating officer.

19. The absence of a witness for the receiving officer (the defendant/ANO Asmawi) when items were handed over raises questions about adherence to protocol. The absence of a witness for item receipt and leaving the "*nama saksi penerima*" was highlighted.

20. In conclusion, while the testimony reflects efforts to adhere to standard procedures in handling seized items, certain deviations raise concerns about the integrity and credibility of the evidence presented in the case. Proper adherence to protocol, including ensuring witness presence during item receipt, is crucial in maintaining the integrity of the chain of custody, however, as we move along there will appear to be sufficient evidence that E5, E7 and E9 were in fact seized and taken into custody by NCB.

<u>PW3 - ANO Yuradani bin Md Yunos</u>

21. PW3's role in the case involved drawing the rough sketch plan during the investigation. He prepared an 117B statement which was confirmed and tendered as evidence (P6).

22. In giving evidence, PW3 described the BKN 20 stamp used for tracking exhibits entering and leaving the strong room. He Explained procedures for depositing and withdrawing cash monies from the strong room and detailed the process of receiving and handling exhibits from the defendant, including the depositing of E5, E7, ID5, and ID6.

23. PW3 summarised the Strong Room Procedures as follows:

    a. Depositing money: The IO hands over seized money with a BKN 114 Form. The money is checked, compared with the list, and stored securely.
    b. Withdrawing items: IO informs the strong room officer, who retrieves the item, stamps the BKN 20 book, and logs the withdrawal.

24. PW3 also confirmed receiving the Sophie Martin wallet (P5) and recording his interactions with the defendant in his diary (P7). PW3 said that he received sealed plastic bags from the defendant containing cash (P14 AND P15), checked them against records, and deposited them in the strong room even though the cash did not correspond with the original serial numbers (E5 and E7). It is important to mention that PW3 gave evidence on the rejection of item E9 due to mismatch with BKN 114 on 25.2.2017.

25. When cross-examined, PW3 gave evidence that he has known the defendant since 2003 and they worked together in the same room at BKN. He testified on the conditions and multitasking nature of their work at BKN Tutong. He also expressed a positive opinion about the defendant's character and work ethics, noting no issues or accusations of mishandling money during his tenure at BKN Tutong.

26. I accept PW3's evidence in that his role was to document and manage exhibits during the investigation. His duties involved ensuring the proper handling, recording, and storage of seized items. The detailed description of the procedures followed when receiving and removing items from the strong room indicates a systematic approach to handling exhibits, ensuring transparency and accountability.

27. I also accept that the defendant's deposits of items back to the strong room were unique as the serial numbers on the cash that was returned (P14 and P15) did not match the records. Despite this discrepancy, PW3 accepted the items due to matching amounts. However, this discrepancy was recorded in the strong room records (P6B).

28. PW3's interactions with the defendant, Hj Asmawi, suggest a long-standing professional relationship built on trust. The description of the working conditions, including the room setup and multitasking nature of the job, provides context for the operational challenges faced by the personnel at NCB.

<u>PW4 Greecay binti Anai</u>

29. PW4 was the operations head for Tutong district in the enforcement of NCB. She prepared a 117B statement, confirmed it, and identified her signature on it (P8). PW4 also mentions the defendant as part of her evidence and confirmed recognizing him in court.

30. PW4 clarified that the Investigating Officer (IO) is ultimately responsible for seized items as per NCB procedures. She stated that seized items should be kept in the strong room, and the IO can only remove them for analysis or court hearings. PW4 emphasized the importance of BKN 114 form, which the IO is responsible for completing correctly. It was also explained that the IO is responsible for the safekeeping of seized money as per section 2 of P8A, NCB's book on rules and procedures known as 'Arahan Tetap 006 BKN'.

31. During cross-examination PW4 said that she had known the defendant for over 10 years. She also acknowledged that working in NCB involves multitasking. She agreed that exhibits were withdrawn multiple times during a big case involving Mustaqim for various investigative processes, including sending items to labs in Singapore and DSU.

32. PW 4 disagreed with the defendant's claim of a discussion about returning money not linked to drug proceeds. However, she confirmed she had never encountered CBT involving the defendant since 2014 when she started working in Tutong. She then clarified that the BKN 114 form is filed in the IP file and possibly in the exhibit room (strong room) and stated that if the BKN 114 form is incomplete, it can still be accepted if all exhibits are recorded correctly, provided the IO gets a witness.

33. PW4 emphasized the critical role of the IO in handling and safeguarding seized items, ensuring they are stored securely in the strong room and only removed for specific purposes like analysis or court hearings. The IO's responsibility extends to completing the BKN 114 form accurately.

34. The defendant attempted to challenge Greecay's testimony by recalling past interactions and suggesting disagreements on procedures. However, Greecay stood firm on her account and professional obligations.

35. I accept that PW4's evidence supports the structured and protocol-driven nature of NCB operations. She also vouched for her own and the defendant's professional conduct, confirming that she hadn't encountered any misconduct involving the defendant. The emphasis on the BKN 114 form highlights its importance in ensuring accountability and proper record-keeping. Even if the form is incomplete, it can be accepted under certain conditions, reinforcing the importance of accurate documentation and adherence to procedures.

36. There are discrepancies between Greecay's and the defendant's accounts, particularly concerning past discussions and procedures. The court will need to weigh these inconsistencies to determine credibility in due course.

37. Overall, I accept PW4's evidence on the importance of proper procedures, documentation, and the responsibility of the IO in NCB Operations. The cross-examination revealed differing memories and interpretations, which the court will need to reconcile later.

<u>PW5- NO Snnry Ecs</u>

38. PW5 gave evidence and tendered a 117B statement (P9). PW5 explained his position as the head of a raid highlights that resulted in a case file being opened (TT,BKN/18B/2016) in which the defendant was an IO. His involvement in significant operations, implied a level of expertise and responsibility in managing raids and investigations.

39. PW5 emphasized the procedural requirements for returning seized items and taking second statements. The defense challenged this by recalling a verbal discussion where an opinion was sought but not instructions given. Snnry reiterated that decisions to return items or take out exhibits for further statements lie with the IO. He explained the suspects that were arrested during the raid (PW6, PW11 and PW12) and the exhibits that were seized (E5, E7 and E9)

40. Similar to PW4's testimony, there's a discrepancy between the defense's recollection of a verbal discussion and Snnry's memory of the event. The defense recalled a verbal discussion where PW5 was asked for an opinion on returning exhibit money, but PW5 emphasized that such decisions are made by the IO and require the Deputy Public Prosecutor's approval. PW5 clarified the procedures for removing and returning seized items and mentioned the use of photo albums for recording statements without needing to remove the items, emphasizing the efficiency and sufficiency of such methods.

41. Like the other witnesses, PW5 confirmed the defendant's good character, mentioning that he had not observed misconduct or integrity issues during the defendant's employment with NCB.

42. Overall, I accept PW5's evidence that reinforces the importance of procedural adherence, the responsibilities of the IO, and the need for transparency and accountability in handling seized items and conducting investigations. The interaction with the defendant again highlights potential discrepancies in recollections of previous verbal discussions which I will address in due course.

PW6 - Nurul Jannah bte Jainah

43. PW6 prepared a 117B statement that made up most of her evidence (P10). PW6 underwent rehab in Al-Islah following the incident/NCB raid on 27.6.2016. PW6 couldn't recall who the Investigating Officer (IO) was at the time of the NCB raid.

44. PW6 further denied being approached about seized exhibits during her time at Al-Islah and Jerudong from June 2016 to 2019. She recalled that people were detained during the raid in 2016 and recalled a few names but couldn't remember all. PW6 mentions the names Adek, Sidu, and Sibul as friend. She also added that only her handphone was taken by NCB and did not ask anyone to send her phone while she was detained.

45. PW6 said that she didn't receive her phone back upon release.

46. I accept PW6's testimony on the seized phone (E9) that was never returned to her.

PW7 - LCpl 4957 Hazirol bin Hj Raya

47. PW7 prepared a 117B statement which was admitted as evidence (P10). PW7 witnessed the handing over of exhibits from NCB to Staff Sergeant 3730 Yusri Majid. The exhibits he was a witness to were in the form of cash and a handphone.

48. PW7's name appeared in the document (P20B) as a witness for Staff Sergeant 3730 Yusri Maji. The cash was listed in the list of exhibits 'senarai rampasan seperi berikut'.

49. PW7 recognized and identified the defendant in court. He clarified that the phone mentioned in paragraph 18 of his 117B statement was Jannah's (PW6) phone. He explained that he had told PW6 that her phone would be returned, although this detail was not mentioned in the statement.

50. The prosecution emphasized that PW6 was the recording officer and not the IO, indicating his role in documenting the events rather than being directly involved in the investigation or decision-making process.

51. I accept that PW7's evidence adds credibility to the chain of custody for the cash (P14 & P15) and handphone (P13) involved in the case. The documents marked as P10 and P20B/ID9 serve as crucial evidence that details the handing over of exhibits, including cash and a handphone.

PW8 - Sgt 3730 Yusri Majid

52. PW8 prepared a 117B statement which was admitted as evidence (P12). He referenced BKN 114, which is a handover form in para 3 of the 117B statement. PW8 recognized the BKN 114 document shown as ID9/P20B, confirming it as the document referred to in para 3 of his statement.

53. PW8 said that he prepared a list of exhibits based on BKN 114. He clarified that the document does not require a signature as it is just a prepared list. The list identified the following seized exhibits:

    a. **EX1:** Samsung Model GT18160 mobile phone (ID8) - Identified and tendered as evidence (P13).

    b. **EX2:** Identified by serial number, (ID5) - Tendered as evidence including the plastic bag (P14).

    c. **EX3:** Cash totaling $514.00 -. Tendered as evidence including the plastic bag (P15).

54. PW8 recognized Hj Mohd Asmawi in court.

55. PW8's testimony is crucial in establishing the chain of custody for the exhibits, including the mobile (P13) phone and cash (P14 and P15) involved in the case. His recognition of the defendant, Hj Mohd Asmawi and the BKN 114 handover form adds credibility to the handling and transfer of exhibits. Further, PW8's detailed identification of each exhibit, including the mobile phone and cash, (P13, P14 and P15) strengthens the prosecution's case by establishing a clear link between the rejected seized items (P13, P14 and P15) and the case.

56. The BKN 114 handover form serves as an important document that details the transfer of the rejected seized exhibits. PW8's recognition and confirmation of this document in his testimony support the proper documentation and handling of exhibits.

PW9 - Sgt 3376 Ak Hj Md Rizal bin Pg Hj Omar

57. PW9's prepared both a 117B statement (P16) and the photo album (P16a) as part of the case's investigation.

58. Photo Album (P16A): The photo album's admission indicates that visual evidence or photographic documentation is part of the prosecution's evidence. The photos could be related to the crime scene, seized items, or other relevant aspects of the case. Visual evidence often serves to corroborate witness testimonies and provide a clearer understanding of the events or items involved in the case.

59. The inclusion of photographic documentation may help to provide a clearer picture of the events. There is evidence, and overall context of the case, enhancing the prosecution's presentation of evidence and arguments of the rejected seized exhibits (P13, P14 and P15) that the defendant returned to the strong room in 2021.

PW10 - S/Sgt 2863 Azami bin Hj Kamis

60. PW10 prepared a 117B statement that was tendered in as his evidence (P17). He gave evidence of a case (TT/CR/121/2021) involving the removal of exhibits from the strong room on 30.3.2021 in NCB under NCB file (TT/BKN/18B/2016). PW10 could not recall the name of the officer who removed the exhibit and was uncertain if NO Alizan (PW13) was present during the removal.

61. PW10 was involved in the handover of the investigation to the Commercial Crime Unit, Royal Brunei Police Force. This involved receiving the case file from the 'Pegawai Pemerintah Polis' and transferring it along with the complainant's statement. PW10 did not document in his diary who released the exhibits from the strong room.

PW11 – Mohd Azezum bin Suan

62. PW11 prepared a statement which was admitted as evidence and marked as P18. He went through Lampiran A (P4C) which is a seizure form with Azezum Suan's name and signature dated 27.6.2016, and Lampiran B (P4A), another document with a signature under Mohd Azezum bin Suan, also dated 27.6.2016.

63. PW11 said that he was arrested and detained on 27.6.2016 along with his brother and friends. He identified Nurul Jannah (PW6) and a group of 3 girls and 8 males as his friends. He said that his money had been seized on the same day and recorded in his statement upon his arrest. PW11 stated that his statement was taken without any threats, force, or inducements.

64. He did not agree that he had been called to give a second statement to the NCB also disagreed that there had been and communication with PW11's bailor and the defendant.

65. Overall, PW11's evidence reveals several points of contention and potential inconsistencies, particularly regarding communication and the circumstances surrounding the taking of subsequent statements and contact from NCB officers after PW11's arrest. It is PW11's evidence that the items that were seized from him, cash and a mobile phone, were never returned. The court will discuss this later.

PW12 – Arul Bin Suan

66. PW12 prepared a statement which was admitted as evidence and marked as P19. Like PW11, PW12 went through Lampiran A (P4D) that records PW12's name and signature and Lampiran B (P4B): Another document with a signature under PW12's name.

67. PW12 said that he was arrested on 17 June 2016. He listed out several names, including Mohd Shaiful bin Suan, Mohd Fikri Suan, Mohd Azezum bin Suan (PW11), Nurul Jannah (PW6), Alias, Jirin, and Aida as others who were also arrested with him.

68. PW12 also denied being informed by anyone to attend for a second statement. He also denied being informed or contacted through his bailor to attend for a second statement.

69. The issue of whether the seized money was from the proceeds of selling money was mentioned. The court emphasized focusing on the charge related to missing money, indicating the importance of staying relevant to the case's central issues.

70. Overall, Arul (PW12) bin Suan's testimony reveals similar points of contention and potential inconsistencies raised by PW11 as well. The defendant maintained that he has either contacted PW11 and PW12 to provide a second statement or had contacted their relevant bailors, however this was denied by both witnesses. It is PW11's evidence that the items that were seized from him, cash and a mobile phone, were never returned. The court will discuss this further.

PW13 – NO Awg Mohd Alizan bin Awg Zaini

71. PW13 prepared a 117B statement (P20) and annexes were authenticated by PW13. He explained the rejection of exhibits E5 and E7 due to mis-matched serial numbers. E5 and E7 were rejected due to discrepancies in serial numbers and were stored in the strong room. Inspection of these items confirmed that their serial numbers did not match those listed in the BKN 114 from 27.6.2016.

72. He also gave evidence on the joint audit inspection conducted with Hjh Nordiana that highlights attempts to verify the seized items' integrity. PW13 claimed to have informed Hj Asmawi/the defendant about discrepancies on 25.2.2021, but this was disputed by the defendant.

73. According to PW13, the strong room is where exhibits are stored, and entries are made in a book to track withdrawals and returns. Rejected items are noted in the book (P6A) and stored separately, often distinguished by labeling. The system of labeling by the strong-room officer and the use of serial numbers for identification was explained by PW13.

74. He recalled a conversation between himself and the defendant on 16 February 2021 asking about the seized exhibits (E5, E9 and E7) the defendant had taken out from the strong room. The defendant had said that he had spoken to PW4 and PW5 to return the monies and had been aware of NCB's standard operations in handling exhibits. The next day on 17 February 2021, the defendant returned P13, P14 and P15 as the original seized items.

75. Upon discovering that the returned items P13, P14 and P15 did not match the original strong room records, PW13 informed his superior, CNO II Hjh Nordiana and the matter was then reported to the police. A police report (P20A) was lodged, and the rejected exhibits were handed over using BKN 114 Form (P20B).

76. The re-examination clarified the identification of the rejected E5 and the process of recording withdrawn items from the strong room, emphasizing the importance of accurate labeling and documentation. PW13 confirmed that any entries after 17.2.2021 referring to E5 likely referred to the rejected E5. In addition, PW13 confirmed that items E5, E7, and E9 were the rejected ones taken out of the strong room and passed to Sgt Yusri (PW8), as per P20B.

77. Overall, PW13's evidence highlights significant issues related to the handling and identification of rejected seized items, which I accept is the correct method.

PW14 – Inspector Rani binti Padan

78. PW14 prepared a 117B statement (P21). Her evidence was that she received P20A which is a copy of the First Information Report (FIR) for a case (TT/CR/121/2021) on 1st April 2021. She also added that a FIR does not necessarily name the suspect; it's an initial report.

79. According to PW14, the defendant's statement (P11A) was taken on 5.4.21 and the questions were prepared by LCpl Hazirol. PW14 agreed to the interpretation of the defendant's statement regarding a Samsung duos phone and its return to Nurul Jannah (PW6) PW6). This was question 18 of the statement (P11A) regarding the Samsung duos phone that PW14 understood that Nurul Jannah (PW6) was contacted to return her phone.

80. She carried out investigations by meeting with ACB Officers on 7th April 2021 and also received the exhibits on 12th April 2021. A further statement was also taken from the defendant on 17th April 2021.

81. When asked for opinion, at paragraph 13 of her 117B statement that PW14 believes the defendant committed CBT based on discrepancies between photos given by BKN, BKN Photo 20, and the BKN 114 list and highlighted differences in serial numbers of the cash monies and the phone model listed in BKN 20 (Samsung Duo) and the phone handed to the police (Samsung GT18168 model).

Defendant's Evidence and Witnesses

D1 – Hj Mohd Asmawi bin Hj Zulkifli (the defendant)

82. The defendant began by stating that had been involved in cases with seized items before but has never encountered missing items until now. The missing items, which consisted of money, disappeared from his office in which the door did not have keys or lock. The defendant took the seized items out to take a statement, believing the cash and handphone were not from drug sales and should be returned. He said that he had a discussion with his superior (either CNO Greecay/PW4 or SNO Snnry/PW5) to seek advice on this matter. However, the defendant cannot recall many specifics of these interactions.

83. The defendant was supposed to take statements from the suspects (PW11 and PW12) whose belongings had been seized (E5, E7 and E9) but could not recall the exact date or if the statements were ever taken. When the defendant then attempted to return the seized items, he discovered the money was missing. The defendant then replaced the missing money with different serial numbers (P14 and P15), fearing the consequences of the missing funds. During an inspection, he informed CNO II Hjh Nordiana about the different serial numbers.

84. According to the defendant, he consulted with a superior to seek advice on the seized items, which is normal practice. However, there is no documentation or clear records regarding this conversation and subsequent actions and this raise concerns.

85. The defendant did not follow the standard procedure for returning seized items (E5, E7 and E9). Instead, he kept the items in his locker in his office, which led to the money going missing. Furthermore, he admitted replacing the missing money out of fear and did not inform the head of the unit about the missing items.

86. The defendant claims he never misused his duty or trust. However, say otherwise through his actions of replacing money with different serial numbers and not following proper procedures.

87. When cross examined, the defendant accepted that on 27th June 2016, he received exhibits E5, E7, and E9 from ANO Abd Malik (PW2). These exhibits were related to cases TT/BKN/18A/2018 and TT/BKN/18B/2018, for which he was the investigating officer (IO) for case 18B.

88. Exhibit E5 consisted of BND$561.00 in cash seized from Mohd Azezum (PW13) (PW13) (PW13), E7 was a Sophie Martin bag with $514 cash seized from Arul (PW12) bin Suan (PW12), and E9 was a Samsung Duos mobile phone with a specific serial number seized from Arul (PW12) bin Suan (PW12).

89. The exhibits were placed in the strong room on 27th June 2016 at 2200 hours. On 6th August 2016, the defendant took the exhibits out for statement-taking. The defendant acknowledged taking the money but could not recall the exact date.

90. On 16th August 2016, the defendant signed the BKN20 book for the seized items and also signed for their return. On 17th February 2021, after being confronted by PW13 he tried to return the exhibits labeled as E5 and E7, which had the same value but mismatched serial numbers from those taken in 2016.

91. The defendant admitted to replacing the money with his own funds but denied using the money. He acknowledged that he returned the wrong phone (P13) to Nurul Jannah (PW6) in 2021, explaining that there were multiple phones seized and some were not included in the exhibits list, causing a mix-up.

92. The defendant emphasized the importance of his diary, which he claimed contained records of all handovers and contacts he had made. He disagreed with the claim that he did not contact Nurul Jannah (PW6) and mentioned he had contacted her bailor. He also mentioned being suspended on 1st March 2021 after working for about 15 years at NCB Tutong, a small branch of NCB where he served as an IO.

93. The defendant's testimony raises several concerns regarding his handling of seized items and adherence to procedural guidelines. He admitted to replacing the money and phone exhibits with his own, which is a serious breach of trust and procedure. This raises questions about his integrity and whether he treated seized items as his own property.

94. The defendant's memory lapses regarding dates and details, despite being the IO, are troubling. He couldn't recall dates or specifics about items he handled, which casts doubt on his competence and reliability.

95. The failure to properly sign and document the handover and return of seized items indicates negligence or incompetence in discharging his duties as an IO. This is particularly concerning given the defendant's claim of 15 years of experience and familiarity with NCB operating procedures.

96. The mix-up of exhibits, such as returning the wrong phone to Nurul Jannah (PW6), indicates a lack of attention to detail and proper record-keeping.

97. While the defendant emphasizes the importance of his diary, relying solely on personal records without official documentation can be problematic. It raises questions about the reliability and accessibility of the information that the defendant seeks to rely on.

98. Overall, the defendant's testimony reveals significant lapses in professionalism, adherence to procedures, and integrity. These issues could potentially undermine the credibility of his investigations and any legal proceedings he is involved in. While the defendant may have had good intentions initially, his actions indicate significant procedural lapses, lack of proper documentation, and a breach of trust.

Prosecution's Submissions

99. The prosecution adopted the same submissions during the prima facie stage as follows:

a. The Defendant, as an Investigating Officer, was entrusted with exhibits E5, E7, and E9 related to a drug case, and the prosecution alleges that he committed criminal breach of trust by misappropriating and converting these exhibits for personal use.

b. The Defendant's status as a public servant is established under the Misuse of Drugs Act, making him accountable for the seized exhibits.

c. The standard workflow for handling seized exhibits is outlined, emphasizing the Investigating Officer's responsibility for the secure storage and proper documentation of seized exhibits during investigation.

d. The seized exhibits were in the Defendant's possession as confirmed by contemporaneous documents, and there is evidence of the movement of these exhibits in and out of the Strong Room.

e. The prosecution argues that the Defendant misappropriated and converted the exhibits by taking them out without proper authorization, failing to return them, and providing false accounts, which they claim were inconsistent and dishonest.

f. The definition of "dishonestly" is presented, emphasizing that the Defendant's actions, such as providing false accounts and failing to report missing items. Prosecution submits that this demonstrates dishonesty on the part of the defendant.

g. The prosecution concluded that the Defendant's explanations are false and incredible, urging the court to infer that he criminally misappropriated and converted the entrusted property. They assert that there is sufficient evidence to establish a prima facie case, and the Defendant should be called to present his defence.

100. In addition, prosecution contends that the evidence at trial has disclosed the following:

a. The defendant is a public servant as an Investigating Officer (IO) at the NCB, Tutong Branch

b. As the IO of TT/BKN/18B/2016 the defendant was entrusted with the seized exhibits (E5, E7, and E9)

c. The defendant placed the seized exhibits in the strong room on 27 June 2016, took them out on 6th August 2017 and did not return the items.

d. On 17th February 2021 the defendant tried to return the seized items and resulted in the records of rejected E5 (P14), rejected E7 (p15) and rejected E9 (P13).

e. The defendant deliberately wen against Arahan Tetap 006 (P8a)

f. The defendant never received instructions to take out or return the seized exhibits and that it was never necessary to take out the seized exhibits for the purposes of statement taking

g. The defendant never wanted a statement from Arul (PW12) (PW12) and Azezum (PW13) (PW11)

h. The seized mobile phone was never returned to Nurul Jannah (PW6) (PW6)

i. The seized items were never stolen as alleged by the defendant and instead the defendant attempted to 'return' the items after he was confronted about it

j. The defendant never kept the seized items in his office locker

101. Prosecution argued that the defendant's version of the events should not be believed. Prosecution contended that the defendant its evidence was confusing and convoluted when he tried to explain the events that transpired. The prosecution argues that the Defendant, as a public servant misappropriated and converted the exhibits by taking them out without proper authorization, failing to return them, and providing false accounts. They further argued that the defendant had acted dishonestly and thus cause wrongful gain or wrongful loss depending on whose perspective.

102. The defendant said that he had taken out the seized exhibits because he intended to either return the exhibits or take a second statement these are two contradicting explanations to which the defendant did not keep to one consistent explanation. His testimony conflicts with the evidence given by several witnesses including Gracie sunny arrow as ISM and girl Jenna. Gracie and sundry both deny that they gave the defendant instructions to return or remove the items from the strong room. Our role as eunan neural Jenna all deny having been contacted by the defendant either personally or through their bailor to return their items.

103. In addition, prosecution has submitted that the defendant contravened the standard operating procedures in our hand it up 006 when handling seized exhibits. It was further added that there was no need for the defendant to take up the cash in order to record a further statement he could have use a picture of the cash because it is not necessary to show the cache exhibits during statement taking. The defendant has argued however that the pictures were not available when he wanted to record the statement.

104. Both Arul (PW12) and Azezum (PW13) denied that they were informed about a further statement. Prosecution also highlighted that both these suspects were on NCB bail bonds and had they refused to come for a further statement this would have been grounds to revoke their bail. Further Azezum (PW13) said during cross examination that he could not be contacted as he did not have his mobile phone because it had been seized. Prosecution also pointed out that there was no way of knowing that the seized items where from the proceeds of selling a car as this was not recorded in any statements and the investigation paper TT/BKN/18b/2016 was still under investigation during the material time therefore it raised the question of whether or not the seized items could in fact be returned considering that the investigation was still ongoing.

105. It was argued by the defendant that when he took out the seized exhibits they were stolen from his office. Prosecution argued had the defendant himself agreed that the room and locker where the seized items were purportedly kept was not in a safe and secure location. Therefore, the fact that the defendant kept these items knowing that the items were not secure and also knowing that the strong room was just a floor below illustrates how weak his defence was.

106. Further prosecution highlighted that it should not be expected from someone with a wealth of investigatory experience such as the defendant to handle seized exhibits in an ongoing investigation in such a careless manner especially when he was entrusted with seized exhibits. Prosecution also highlighted that it does not explain how the original sealed evidence bag used during the raid was taken out but the wallet [P5] containing disease monies [E5 and E7] where left behind and he eventually returned P5 on the 17th of February 2021. It is also curious to note that the remaining mobile phones except for E9 were left untouched and not stolen.

107. It is agreed that the defendant never voluntarily reported to the authorities or his superior up the fact that the items had been stolen. It was only years later when he was confronted that he tried to return the items and came up with an explanation.

108. The defendant also explained that he had handed over the wrong mobile phone to Nurul Jannah (PW6) because he had gotten the phones mixed up. When asked why there was no handover form the defendant explained that this was done at the 11th hour, but the handover was recorded in his diary which he has been unable to retrieve from NCB since March 2021. Nurul Jannah (PW6) denies ever dealing with the defendant she was undergoing rehabilitation and would not have been able to receive the mobile phone. The fact that the defendant said he recorded key events in his diary is not reflected in any of the statements that he gave to the police. Also, if the defendant had indeed recorded the return of the items in his diary this would have contradicted the standard procedure in NCB because there must be at least two officers witnessing any handovers.

109. With respect to the defendant's intention prosecution has maintained that the defendant acted dishonestly. It is undisputed that the defendant replaced the monies and the mobile phone and it is irrelevant that the value of the money was paid up by the defendant. It is prosecution's case that there is a lack of contemporaneous documents to show the movement of exhibits back to normal gender and lack of evidence to show that our Arul (PW12) or Azezum (PW13) were contacted for further statement taking and finally there's an absence of instructions from Greecay (PW4) and Snnry (PW5)to return the seized exhibits. The lack of diligence in adhering to NCB's procedures in filling in the handover forms and his disregard to internal process is in keeping seized exhibits and places that are not secure tantamount to the defendant's dishonest intention.

110. A final issue that was raised by the prosecution is the repeated failure on the part of the defendant to put his case forward to prosecution witnesses this included:

a. failing to ask Nurul Jannah (PW6) if she's signed his diary when her mobile phone was purportedly returned

b. failing to ask Arul (PW12) and Azezum (PW13) that he had contacted their balers and not them
c. failing to ask NO Alizan about the missing seize items on an earlier occasion prior to returning the items to the strong room
d. similarly failing to ask Hjh Nordiana about the same occasion during his cross examination.

Defendant's submissions

111. The defendant, Hj Asmawi, began working with NCB in 2003 and served for 13 years until 2016. Throughout his tenure, they worked in various departments, including Enforcement and Intelligence, Supervision, and Education and Prevention. He asserts that he never violated any orders or rules during their service and carried out their duties with integrity and dedication.

112. In 2016, the defendant opened a case (TT/BKN/IP/18b) involving four individuals, one of whom was not charged due to a negative urine sample. The defendant maintains he handled the case properly and followed protocol. He denies abusing his power and mentions he never misused office resources like the printer or vehicles for personal use.

113. Colleagues and superiors testified positively about the defendant's work ethic and integrity in court. The defendant denies the charges against them and insists they acted in accordance with NCB rules and regulations. However, he acknowledges a mistake regarding a handphone but denies fabricating evidence.

114. The defendant disputes new evidence presented in court, claiming it is an attempt to discredit them. He concluded by reiterating their innocence and commitment to their duties.

Court's Findings

115. As previously ruled during the prima facie findings, the defendant's status as a Public Servant is not in issue. The prosecution established that the Defendant was a public servant as an Investigating Officer at the Narcotics Control Bureau, emphasizing the legal responsibility that comes with this position. The defendant himself has confirmed that he was an Assistant Narcotics Officers and had been tasked as an IO for a case (TT/BKN/18B/2016) involving the seized money (E5 and E7) and phone (E9).

116. The core argument revolves around the Defendant's alleged criminal breach of trust concerning exhibits E5, E7, and E9. The prosecution contends that these exhibits were entrusted to the Defendant as part of his official duties. This is not denied by the defendant who says that he had taken out the money (E5 and E7) and phone (E9) from the strong room. According to the defendant, the money (E5 and E7) was taken out for the purposes of taking another statement to establish that the money (E5 and E7) was not from the proceeds of sale of drugs so that the money and instead from selling a car and (E5 and E7) could be returned to Arul (PW12) and Azezum (PW13). Also, according to the defendant the mobile phone (E9) was removed so that he could return it to Nurul Jannah (PW6), however he got the phone (E9) mixed up and returned the same model but wrong phone (P13).

117. Both Arul (PW12) and Azezum (PW13) have both denied ever being contacted by the defendant to take further statements. I believe these witnesses because they were on an NCB bail at the time, and any failure to report or comply with NCB's requests would have but their bail in jeopardy. There is no evidence to suggest such a statement was taken apart from the defendant's words. The defendant then clarified that he had contacted the suspects bailors. Unfortunately, the bailors were never called to give evidence and there is nothing to substantiate this. I am inclined not to believe the defendant when he asserted this fact.

118. Even if the defendant took out the cash (E5 and E7) so that he could take a statement he ought to have returned the cash (E5 and E7) in any event. The cash (E5 and E7) was taken out in 2016 and only returned in 2021 as P14 and P15. There was more than enough time to record a statement and return cash (E5 and E7) within this period, but it never happened. The defendant said that he took out the exhibits because photographs of the exhibits were not available and thus he needed to show the original exhibits. I find this difficult to believe because photocopies of the cash (E5 and E7) were made when the cash (E5 and E7) was first handed over to the strong room immediately after the NCB raid. Prosecution also emphasized that the seized items were only to be taken out for the purposes of a DSS Analysis or for purposes of carrying on an investigation.

119. Even though this may provide a reason for taking out the exhibits, no reason was given as to why the exhibits were not returned for years. This is an obvious breach of NCB's procedures and protocols.

120. The prosecution outlines the standard workflow for handling seized exhibits, highlighting the specific steps involved in documenting, storing, and retrieving such items. This is found in exhibit P8a. PW4 and PW5 both explained the process of removing seized items. It was also seen on exhibit's P4e, P6a and P6b show different points in time that illustrate items E5, E7 and E9 were removed by the defendant from the Seizing Officer or removed from the Strong Room. The prosecution presented this timeline of events and actions, indicating that the Defendant took the seized exhibits out of the strong room without proper authorization, failed to return them, and provided inconsistent and false accounts.

121. There is an obvious breach of procedures and protocols on the defendant's part. He is an experienced NCB officer with nearly 15 years of experiences and was fully aware of the procedures required when removing and returning items from and into the strong room. It is also important to address the defendant's contention of the items being stolen from his office. The defendant and his colleagues were fully aware that their office was not secure. There was no lock and entry to the defendant's shared office was accessible by numerous people at any time. Furthermore, due to the multi-tasking nature of his job the defendant was not always at his table and was in and out of his office. All these factors show that the defendant's office was not secure and that anything valuable would be at risk.

122. NCB had provided a strong room for purposes of safe-keeping exhibits. I accept the evidence and note the procedures that record the chain of evidence from items moving in and out of the strong room. There is simply no excuse for the defendant to have kept the items for as long as he did in his office knowing that his room was not secure and knowing that seized exhibits must be kept in the strong room. Again, I bear in mind that the defendant is an experienced NCB officer.

123. I therefore have no doubt that the defendant misappropriated the cash (E5 and E7) while in his custody as the Investigation Officer carrying out his duties during his employment with NCB.

124. I turn now to the issue of the mobile phone (E9) that belonged to Nurul Jannah (PW6). There had been at least 2 phones that had been seized in connection to case that the defendant had been tasked to investigate (BKN/TT/18b/2016). It is the defendant's contention that he had returned the wrong mobile phone (E9) to Nurul Jannah (PW6) that resulted in him returning the wrong phone (P13) to the strong room. The defendant had said that he had received authorisation to return the items from his superiors, however this was denied by both Greecay (PW4) and Snnry (PW5).

125. It is difficult for me to accept the defendant's argument. Firstly, NCB has proper procedures with respect to returning items. The defendant is all too familiar with NCB's procedure in handling seized exhibits ad returning them. There is no paperwork or written instructions or any type of record available to prove that instructions had been given to the defendant by Greecay (PW4) or Snnry (PW5). Even if the defendant's diary is not available, the diary of Greecay (PW4) or Snnry (PW5) could have been available to substantiate the defendant's version of events. This was never produced as evidence. Secondly, again there are no paperwork or written instructions or any type of record available to prove that a phone (E9) had been returned to Nurul Jannah (PW6). Even if the defendant had put a record or note in his diary, I have serious doubts that this would have been proper and side with the prosecution that the proper procedures with respect to handover forms and witnesses ought to have been complied with.

126. Nurul Jannah (PW6) says that she was in Al-Islah (rehabilitation) until 2019 and therefore could not have received the phone (E9). She did not have a bailor who the defendant could contact because she has been institutionalised into the rehabilitation centre. I believe Nurul Jannah (PW6), there is simply nothing to corroborate the defendant's story. I therefore have no doubt that defendant misappropriated the mobile phone (E9).

127. I know must determine whether the defendant had the dishonest intention to misappropriate the cash (E5 and E7) and mobile phone (E9). The prosecution refers to legal definitions of "dishonestly" and argues that the Defendant's actions, including false accounts and failure to report missing items, demonstrate dishonesty. Particularly pointing out that the owners of these seized items (E5, E7 and E9) never received the items back. The defendant argues that he did not act dishonestly. When he discovered that the cash (E5 and E7) had been 'stolen' or gone missing from his office he became worried and admitted that he did not report his to his superiors. Instead, he tried to replace the money (E5 and E7) with his own money (PW14 and PW15). The defendant emphasised repeatedly that he was fearful and aware that his position was in jeopardy because of the missing cash (E5 and E7) (E5 and E7). He allegedly told his colleagues that the cash (E5 and E7) had gone missing, unfortunately both his colleagues deny this, and I highly doubt that the defendant is telling the truth.

128. Section 24 of the Penal Code define dishonesty as:

*“**"Dishonestly"***
24. Whoever does anything with the intention of causing wrongful gain to one person”

129. Section 23 of the Penal Code define wrongful gain and wrongful loss as:

*“**"Wrongful gain" and "wrongful loss"***
23. (1) "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled: and "wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.
(2) A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully.
(3) A person is said to lose wrongfully when such person is wrongfully kept out of any property. as well as when such person is wrongfully deprived of property.”

130. I must now decide whether the defendant had the dishonest intention by appropriating the cash (E5 and E7) that did not belong to them for personal use, even with the intention of returning it later. I note that there is no evidence to suggest what the money (E5 and E7) was used for. Prosecution has argued that it is not necessary to prove the precise money (E5 and E7) was spent or appropriated by the user and that it is enough to establish criminal breach of trust by the defendant’s failure to account for the money (E5 and E7). It therefore means that any negligence would not amount to a criminal breach of trust. I would also add the mere retention of the cash (E5 and E7) would not fulfill all the elements of the offence of criminal breach of trust.

131. A false explanation is sufficient to prove the element of dishonesty. I must therefore decide, do I think that the defendant’s explanations with respect to the missing money (E5 and E7) and mixed up mobile phone (E9) were false?

132. I am guided by the case of *Public Prosecutor v Lam Leng Hung and other appeals* [2017] 4 SLR 474; [2017] SGHC 71:

“86 … The main issues in the case were whether (a) the actus reus that the accused persons had used the entrusted property in violation of a direction of law prescribing the mode in which the trust is to be discharged; and (b) the mens rea of dishonesty had been proven.”

133. I have already been satisfied that the defendant had indeed misappropriated the property. Therefore, I must be satisfied that the defendant had acted dishonestly. Using the same case law at the following paragraphs I am guided as follows:

“179 … A finding of dishonesty must be premised on the interaction between intention and knowledge. Where an accused knows that an action is unauthorised but nonetheless proceeds to execute it voluntarily, this would strongly support a finding of dishonesty.

184… The pertinent question, in the assessment of dishonesty in a CBT charge, is whether the accused intended to do an act that would cause wrongful gain or wrongful loss to another in circumstances where he knew that he was not legally entitled to do that act. Such
an intention would often have to be proved by inference from the surrounding circumstances.”

134. There are simply too many issues that point to the defendant's dishonest intention. Firstly, the monies (E5 and E7) were taken out for the purposes of taking a further statement. I simply do not believe this. The defendant is an experienced IO. The defendant's experience coupled with established operating procedures would only mean that the proper steps he should have taken was to firstly, secure the attendance of Arul (PW12) and Azezum (PW11) and then only take out the exhibits when both Arul (PW12) and Azezum (PW11) were at NCB to give their statements. Further, it is all to convenient and also incorrect to say that pictures of the cash (E5 and E7) were not available. As an experienced IO, the defendant should have then waited for the pictures to be available as per NCB's protocol. The arrest happened on 27th June 2016, the items were seized on the same day, the defendant removed the items on 6th August 2016 and the wrong items (P13, P14 and 15) were returned on 17th and 25th February 2021. The strong room had pictures of the cash (E5 and E7) exhibits and the defendant could have used insisted that pictures during statement taking or take photocopies of the money (E5 and E7) and return the money (E5 and E7). It just does not make sense that the defendant kept the money (E5 and E7) in his locker knowing that his office and locker were not secure and that he was always not at his desk. I find it difficult to accept that the real reason for taking out the money (E5 and E7) was for purposes of statement taking. There is simply no other evidence to substantiate this other than the defendant's words.

135. Whether or not the defendant did make arrangements for Arul (PW12) and Azezum (PW11) to give a second statement is also in issue. Arul (PW12) and Azezum (PW11) said that they were never called and also could not be contacted as their phones had been taken. I would agree that with the prosecution's suggestion that Arul (PW12) and Azezum (PW11) were in a difficult position in that they had been arrested and were on NCB bail. Therefore, it would be in their best interest to comply with the IO's instructions especially if they were called to record a statement. Further, if indeed Arul (PW12) and Azezum (PW11)'s bailors had been called to contact them then the defendant ought to have called these bailors to testify on his behalf at trial. Again, as an experienced IO and NCB officer the defendant ought to have known very well that he must have some other form of corroborative evidence to prove his point. Without it, I find it difficult to believe him.

136. It is simply doubtful that the money (E5 and E7) was stolen from his room. If, in fact the defendant kept the cash (E5 and E7) in his office, this would have been incredibly careless and would make the defendant unaware of the standard operating procedures in NCB. It is also questionable that not all the seized items from file number BKN/TT/18b/2016 that the defendant had taken out had gone missing. The defendant's explanation goes against the many times the defendant has said that he has been involved in numerous investigations in the past and had a pristine career leading up to this case. I simply cannot believe that the defendant was unaware of the consequences of keeping money (E5 and E7) in his locker in an unsecured room after he has said many a time that he carried out his duties with integrity and dedication. There is simply no reason not to return the items to the strong room especially when the strong room is located so close to the defendant's office.

137. For the reasons I have just stated I find that the defendant had dishonestly in misappropriating the cash (E5 and E7) exhibits.

138. Turning now to the mobile phone (E9), similarly there are two conflicting version of events. The defendant states that he had contacted Nurul Jannah (PW6) to collect her phone (E9) and instead and when the phone was handed over the Nurul Jannah (PW6) he gave her the wrong phone. Nurul Jannah (PW6) said she could not have been contacted because she had been undergoing rehabilitation until 2019. Again, I can't state the number of times that the defendant expressed his experience, particularly in conducting investigations. He could not remember the exact date of handing over the phone and just could not offer anything else to substantiate his story. It just doesn't make sense that the defendant did not prepare any documentation or have any paperwork apart from his alleged diary. The defendant with his years of experience must have known that the rerun of seized items is not taken lightly, and paperwork and witnesses must be present before the items are returned.

139. Considering the conflicting accounts regarding the mobile phone (E9) incident, it appears more plausible to believe Nurul Jannah (PW6)'s testimony over that of the defendant. Therefore, based on the discrepancies in the defendant's account and the lack of supporting evidence, it is reasonable to lend credence to Nurul Jannah (PW6)'s version of events.

140. Therefore I find that the defendant had dishonestly misappropriated the mobile phone (E9).

141. Finally, even though the value of the money (E5 and E7) was returned and a different mobile phone (P13) was returned the loss to the owners Arul (PW12), Azezum (PW11) and Nurul Jannah (PW6) or NCB is not an ingredient to the offence.

<u>Conclusion</u>

142. After hearing and scrutinising the evidence put forward by the Prosecution and after the cross-examination of the prosecution witnesses by the defendant and the submissions, I am satisfied that the Prosecution has produced enough evidence to the elements of criminal breach of trust against the defendant.

143. Considering the weight of the evidence presented by the prosecution and the credibility of the eyewitnesses, having established all the elements of the offence, and that no viable defence has been raised, I find that the prosecution had proved the charge against the accused beyond reasonable doubt and convict the defendant accordingly.

HAZARENA BTE POKSJ DP HJ HURAIRAH
Judge, Intermediate Court